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Senate

SANCTIONS RATIONALIZATION ACT

Mr. BIDEN. Mr. President, I am pleased to join my friend from Connecticut, as well as Senators Hagel and Roberts, in introducing the `Sanctions Rationalization Act of 1998.'

The bill establishes a means for the President to delay, suspend, or terminate certain unilateral economic sanctions, or a portion thereof, if doing so is important to U.S. national interests. The bill also provides a means for Congress to overturn any such decision, and provides for expedited procedures within the House and Senate for consideration of a resolution to reverse a Presidential decision.

I have become increasingly concerned that Congress' efforts to impose sanctions is unduly hampering the President's ability to conduct U.S. foreign policy. To say this is not to suggest that Congress has exceeded its authority in the foreign affairs area. Under the Constitution, both Congress and the President have considerable foreign policy powers. As Professor Edward Corwin, a noted authority on the Presidency, once wrote, the Constitutional design on foreign policy tenders an `invitation to struggle.'

Indeed, Congress has several powers under the Constitution in the foreign affairs area.

It has, among other things, the power of the purse, the power to declare war, the power to raise and support the military, and the power to regulate foreign commerce.

Congress is well within its power to impose sanctions against foreign governments. And in many instances, sanctions--or the embarrassment to the foreign government which flows from their imposition--have had a positive effect in advancing U.S. policy.

But what Congress cannot do is to conduct the daily business of diplomacy. Only the President can undertake negotiations with foreign governments and leaders. And any law which limits the ability of the United States to engage with foreign nations necessarily limits the options available to the President as he seeks diplomatic solutions to foreign policy problems.

Foreign policy, however, usually involves a complex mosaic of interests, and requires use of a wide range of diplomatic instruments. Moreover, foreign policy is not static--constantly changing circumstances often require calibrations in policy.

The imposition of statutory sanctions, in many cases, serves to undermine the ability of the President to balance the competing interests and to respond to changes on the ground overseas.

In sum, statutory sanctions are often a blunt instrument, when the situation at hand may call for an instrument which the President can fine-tune.

The most significant part of this legislation, in my view, is that it gives the President the power to calibrate sanctions once imposed--that is, to adjust or modify the application of a sanction as the situation may warrant. Accordingly, he can use the authority in this bill to try to induce the desired action by the foreign government by lifting or modifying a sanction progressively.

The bill does not allow the President to terminate those measures that are imposed on a multilateral

basis, including obligations under resolutions of the United Nations Security Council, nonproliferation and export control arrangements like the Australia Group, the Nuclear Supplier's Group, the Missile Technology Control Regime, and the Wassenaar Arrangement.

The bill also does not allow the President to terminate those measures taken under treaty obligations, such as those under the Chemical Weapons Convention, the Nuclear Non-Proliferation Treaty and the Biological Weapons Convention.

Further, the bill does not apply to several types of measures, including foreign military financing, export controls and restrictions under the Arms Export Control Act, any measure taken pursuant to section 307 of the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991, any measure to restrict imports of products and services in order to protect domestic health or safety, any measure to enforce a federal criminal law, and any retaliatory trade measure authorized under our trade statutes or international trade agreements.

In proposing this legislation, I do not envisage that the authority granted to the President would be employed casually. Instead, like analogous waiver authority in the Foreign Assistance Act--section 614 of that Act--I expect that this power would be used only when absolutely necessary, only after careful consideration in the Executive Branch, and only after careful consultation with the appropriate committees of Congress.

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And in cases where the President does abuse the authority this bill grants him, Congress would still have the power to reverse the
President's decision, and resolutions to do so will be entitled to expedited procedures which would ensure their prompt
consideration.

I wish to emphasize that I do not regard this bill as a final product. Rather, it is a work in progress. This is a complicated subject;
defining what constitutes a `sanction' is a difficult undertaking, as is drafting the necessary exclusions.

Accordingly, I welcome contributions from our colleagues, the Executive Branch, and non-governmental organizations.

Of course, this is not the only legislation on this subject. Our colleagues, Senator Lugar, and Representative Hamilton, have made
an important contribution in promoting the debate on this subject in introducing their sanctions reform legislation. The Majority and
Minority Leaders plan to appoint a special task force to review the issue, and I am certain that legislative proposals will emerge from
those discussions.

In closing, I should state that I am under no illusion that passing this legislation will be easy. It may be that we cannot reach a
consensus on acceptable legislation in the remaining months of the 105th Congress.

What is important now is that the Executive and the Congress have initiated a dialog, on a bipartisan basis, on a subject of
considerable importance to our national interests. I look forward to engaging in that debate in the weeks and months ahead.

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